



Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

Greg Lukianoff
PRESIDENT

Robert L. Shibley
VICE PRESIDENT

William Creeley
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

Alan Charles Kors
CO-FOUNDER AND
CHAIRMAN EMERITUS

BOARD OF DIRECTORS

Harvey A. Silverglate
CO-FOUNDER AND
CHAIRMAN

Barbara Bishop
William J. Hume
Richard Losick
Joseph M. Maline
Marlene Mieske
Daphne Patai
Virginia Postrel
Daniel Shuchman
James E. Wiggins

BOARD OF ADVISORS

Lloyd Buchanan
T. Kenneth Cribb, Jr.
Candace de Russy
William A. Dunn
Benjamin F. Hammond
Nat Hentoff
Roy Innis
Wendy Kaminer
Woody Kaplan
Leonard Liggio
Herbert London
Peter L. Malkin
Muriel Morisey
Steven Pinker
Milton Rosenberg
John R. Searle
Ricky Silberman
Christina Hoff Sommers

March 24, 2009

Chancellor Robert C. Holub
University of Massachusetts Amherst
374 Whitmore Administration Building
Amherst, Massachusetts 01003

Sent by U.S. Mail and Facsimile (413-545-2328)

Dear Chancellor Holub:

As you can see from the list of our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, freedom of association, religious liberty and, in this case, freedom of speech on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of expression posed by University of Massachusetts Amherst's (UMass Amherst's) decision to charge the UMass Amherst Republican Club for extra security due to the expected presence of protesters for a speech by nationally syndicated columnist Don Feder.

This is our understanding of the facts; please inform us if you believe we are in error. On or about February 4, 2009, Republican Club President Greg Collins requested two police officers for a "Lecture on hate crimes" to be presented by Feder on March 11. According to the Agreement for Services of about February 4, two police officers from the UMass Amherst Police Department (UMPD) were to be assigned to the event at a total cost of \$280.48.

After the club put up fliers promoting the speech, a group of students calling themselves the Coalition Against Hate posted fliers that called for people to protest against Feder at the event. The Republican Club learned that protesters indeed planned to attend the event. According to Collins, UMPD strongly urged the club to accept increased security for the event because of the protesters.

A new Agreement for Services thus was drawn up on March 11. This new Agreement for Services stipulated that the club would be charged for extra security for the speech: \$164 for one UMPD police supervisor and \$561 for four UMPD patrol officers, for a total of \$725. This represents an increase of \$444.52.

In order to host a controversial event where protesters are expected, UMass Amherst thus required a student organization to provide hundreds of dollars in extra funding for security. This extra security was provided solely because of the potentially hostile reaction of audience members to the content of the speech. Yet *any* requirement that student organizations hosting controversial events pay for extra security is unconstitutional because it affixes a price tag to events on the basis of their expressive content.

The Supreme Court addressed precisely this issue in *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134–135 (1992), when it struck down an ordinance in Forsyth County, Georgia, that permitted the local government to set varying fees for events based upon how much police protection the event would need. Criticizing the ordinance, the Court wrote that “[t]he fee assessed will depend on the administrator’s measure of the amount of hostility likely to be created by the speech based on its content. Those wishing to express views unpopular with bottle throwers, for example, may have to pay more for their permit.” Deciding that such a determination required county administrators to “examine the content of the message that is conveyed” (citation omitted), the Court wrote that “[l]isteners’ reaction to speech is not a content-neutral basis for regulation.... **Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.**” (Emphasis added.)

As a public university, UMass Amherst is both legally and morally bound by the First Amendment’s guarantees of freedom of association and freedom of expression. That the First Amendment’s protections fully extend to public colleges like UMass Amherst is settled law. See, e.g., *Keyishian v. Board of Regents*, 385 U.S. 589, 605-06 (1967) (“[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment”); *Healy v. James*, 408 U.S. 169, 180 (1972) (citation omitted) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools’”); *Widmar v. Vincent*, 454 U.S. 263, 268-69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities”).

In the interest of preserving content neutrality in determining fees for campus events, UMass Amherst cannot and must not force student groups to pay more money for security protection because others in the community might feel offended by an event and subsequently become violent or try to disrupt the event.

Indeed, by holding student organizations that host expressive events financially responsible for possible disruptive activity resulting from the controversial character of their events, UMass Amherst effectively grants a “heckler’s veto” to the most disruptive members of the university community. Individuals wishing to silence speech with which they disagree merely have to threaten to protest, and student groups unable to furnish adequate funds for security will be

forced to cancel their events. In such a situation, disruptive heckling triumphs over responsible expressive activity. This is an unacceptable result in a free society and is especially lamentable on a college or university campus, identified by the Supreme Court as “peculiarly the marketplace of ideas.” *Healy v. James, id.* Controversial speech cannot be unduly burdened simply because it is controversial.

To make matters worse, in this case the heckling from the audience at the Feder speech did in fact disrupt the event, despite the presence of the additional UMPD officers, as video of the event makes clear.

To repeat: UMass Amherst cannot, consistent with the university’s legal and moral obligation to uphold the First Amendment on campus, require student organizations to pay security fees for an event on the basis of the event’s expressive content. UMass Amherst must apply only content-neutral criteria when assessing security costs for events. The increase of \$444.52 is plainly a result of the intended protests, and it accordingly must not be charged to the UMass Amherst Republican Club. If such funds have been paid by the club, they must be returned.

Finally, FIRE notes that after our organization wrote the University of California at Berkeley regarding this very issue on February 12, 2009, the school *acknowledged its legal responsibility not to burden controversial speech*. The University of California at Berkeley subsequently agreed to apply only content-neutral criteria when assessing the security charge for events, regardless of the expected audience reaction and the university’s assessment of the amount of security needed. Such criteria reportedly include the expected number of attendees, the nature of and number of exits from the room for the event, whether money is to be exchanged, and so on. We commended Berkeley for its model reaction, and we suggest this example to you in the interest of promoting best practices on campus.

FIRE hopes to resolve this situation amicably and swiftly; we are, however, prepared to use all of our resources to see this situation through to a just and moral conclusion. We request a response to this letter by April 14, 2009.

Sincerely,



Adam Kissel
Director, Individual Rights Defense Program

cc:

Esther Terry, Vice Chancellor for Student Affairs and Campus Life
Jo-Anne Vanin, Associate Vice Chancellor/Dean of Students
Byron Bullock, Associate Vice Chancellor for Student Affairs and Campus Life
Sara Littlecrow-Russell, Director, Center for Educational Policy Advocacy
Tom O’Donnell, UMass Amherst Police Department